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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

HENDERSON JOHNSON,

Defendant and Appellant.

B169313

(Los Angeles County  
Super. Ct. No. NA050332)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark C. Kim, Judge. Affirmed.

Richard L. Schwartzberg for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L. Fuster, Supervising Deputy Attorney General, and Chung L. Mar, Deputy Attorney General, for Plaintiff and Respondent.

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Henderson Johnson appeals from the judgment entered following a jury trial in which he was convicted of first degree murder and found to have personally and intentionally discharged a firearm, proximately causing death. He contends that a juror was improperly discharged during deliberations. We disagree and affirm the judgment.

### **BACKGROUND**

On the evening of September 14, 2001, Faafeti Tanielu and several acquaintances were walking toward a 7-Eleven Store in Long Beach when a car driven by defendant pulled up next to the group. Defendant's girlfriend, who was in the passenger seat, ducked down as defendant said something to Tanielu. Defendant then displayed a semiautomatic gun, fired several shots at Tanielu, and drove off. Tanielu died of multiple gunshot wounds.

At trial, one of Tanielu's companions identified defendant as the shooter, stating that she had seen him on several occasions before the shooting and that his appearance was distinctive because the lower portion of his left arm was missing. Another of Tanielu's companions, who had selected defendant's photograph from a six-pack a few days after the shooting, testified at trial that he had seen defendant on prior occasions and recognized him as someone who was present on the night of the shooting.

Defendant presented evidence that one of the witness's statements to the police had not been completely accurate. Defendant argued to the jury that various inconsistencies in witnesses' statements to the police and their trial testimony established a reasonable doubt as to his guilt.

### **DISCUSSION**

On the morning of the third day of deliberations, Juror No. 5 submitted a note, the contents of which were summarized by the trial court as follows: "[T]here's an allegation that Juror Number 4 was a previous victim of a shooting, and he's also familiar with the area in which the particular alleged incident took place. And according to Juror Number 5, Juror Number 4 is improperly bringing in his personal experiences, as well as his personal knowledge about that particular location in helping him and others deliberate in this case."

Juror No. 4 was then questioned outside the presence of the other jurors. He stated that he had been the victim of a shooting when he was 12 years old, but that he had not “brought that up during deliberation at all.” Also, he was familiar with the location of the shooting, but had not “let[] it come into play during deliberation.” Upon further questioning, Juror No. 4 admitted that he had brought up the shooting incident during deliberations, “[j]ust as a for instance, . . . but not as personal experience . . . .”

After Juror No. 4 left the courtroom, the prosecutor argued that Juror No. 4 had not been honest during voir dire, because the questions presented to prospective jurors “contained the question of being the victim of any type of similar crime.” Following further discussion, it was determined that other jurors would be questioned. That questioning, during which the jurors were each brought into the courtroom on two separate occasions, revealed in pertinent part as follows:

Juror No. 5, who had written the note, stated that during deliberations Juror No. 4 said the following: Juror No. 4 had grown up in the neighborhood where the shooting took place and was “familiar with the aspects of activities and sites in the neighborhood,” he knew the street lights in the area and those lights would not provide enough illumination to make an identification, and the area has a lot of drug traffic. Juror No. 4 had further stated that he had been shot at on two occasions and that he knew “in that situation, there’s too much stress involved that anybody can possibly make an identification of a face; they’re looking at the gun, and they cannot see the face.” Juror No. 4 also had stated it was unreasonable for the police not to question other people because of the high volume of car traffic and drug dealing in the area.

Juror No. 1 stated that three jurors, Nos. 3, 4, and 11 or 12, had spoken of being either a victim or a witness to a shooting and discussed their frame of mind during the shooting. Several jurors knew the area had a reputation for drugs.

Juror No. 3 stated that Juror No. 4 had spoken of being shot at when he was 12 years old.

Juror No. 6 stated that Jurors Nos. 3 and 4 had mentioned being shot at (Juror No. 3 while she was in Venezuela).

Jurors Nos. 7 and 8 stated that Juror No. 4 had talked about his experience as a shooting victim.

Juror No. 9 stated that Juror No. 4 was the only juror who said he was familiar with the area where the shooting took place.

Jurors Nos. 10 and 12 stated that Juror No. 4 discussed his prior experience and said that he had not looked at the shooter's face because he was more interested in running away. Juror No. 4 further stated that he did not believe anyone close to the shooting victim under the circumstances presented in the case could make an accurate identification.

When Juror No. 4 was questioned a second time, he acknowledged that on voir dire he had been asked whether he had been the "victim of a crime similar to that that is charged here." He stated that he did not reveal the shooting incident in which he was involved because he felt it would have no bearing on his ability to serve as a juror and he did not want to waste the court's time. He did tell other jurors that he was the victim of a shooting when he was 12 but denied having said that, based on his prior experience or being familiar with the area, the witnesses in the case could not have identified the shooter.

The prosecutor requested that Juror No. 4 be discharged. Defendant argued against removal. The trial court ordered Juror No. 4 removed, as follows: "I am going to make the following ruling. Deliberation process must be protected. The sanctity of it must be protected. There has to be a balance. The court has to presume that there will be a prejudice if the removal is, in fact, granted. For example, if a juror relies upon faulty logic or analysis, or doesn't come to a right conclusion, that does not mean that a juror is not deliberating. But this case is distinguishable in a number of ways.

"First of all, juror number four indicated that he knew that the questionnaire that was handed out asked him whether or not — the question was there for him to tell us whether or not he was a victim of a crime similar to this. He also indicated that he heard the court ask him specifically whether or not he was a victim of shooting. And his

response was that he decided not to answer that yes because he felt that this would have absolutely no bearing on his deliberation if he is chosen as a juror.

“Well, there is certainly misconduct, because that particular statement does not make sense because he says it would not influence him in his deliberations, yet he brought it up during deliberation process. He indicated, one, he was a victim of shooting when he was 12, and therefore, that there is no way a person in a like situation could possibly be a witness to a suspect because the first instinct would be to run, just like he did. That was brought up by, obviously, juror number five.

“... And other jurors who basically said the same thing. Inference is clear. He brought it up in the context of identification and remembering of what happened. That based on his personal experience that there is no way that a witness in a similar like situation could possibly identify suspects.

“So when he said that it would not make a difference, yet it did, I think the conduct speaks for itself. I think most of the jurors also indicated and their description was interestingly very similar in that juror number four placed himself above other jurors, by using his personal experience as almost expert-like testimony. And that clearly violates [CALJIC No.] 1.03 [(Juror Forbidden to Make Any Investigation)], which was read to him during preselection, after the evidentiary portion of the trial, and it was read to him again at least during the deliberation process by the foreperson. Yet, he decided to ignore that.

“He also brought up the issue of his personal knowledge of the area, that because of the lighting situation, because of the traffic, because of the drug trafficking in the area, that he brought up the question of witnesses’ credibility. That is, again, outside the scope of evidence that was presented, which [CALJIC No.] 1.03 specifically states he could not do.

“Based on the totality of the circumstance, based on balancing of the need to maintain the sanctity of deliberation, compared to whether or not a misconduct rises to such a level that removal is the only remedy that is available, the court finds that such

remedy is the only remedy that is available. Therefore, juror number four is removed for cause.”

Penal Code section 1089 provides that a juror may be discharged at any time if “upon . . . good cause shown to the court [the juror] is found to be unable to perform his or her duty . . . .” The juror’s inability to perform “““must appear in the record as a demonstrable reality.”” [Citation.]’ [Citation.]” (*People v. Cleveland* (2001) 25 Cal.4th 466, 474.) The decision to discharge a juror is reviewed for abuse of discretion and will be upheld if supported by any substantial evidence. (*Ibid.*)

Defendant contends that the trial court’s ruling constituted an abuse of discretion because Juror No. 4, who was not the only member of the jury to have been a victim of a shooting or have knowledge of the area where the shooting took place, was able to perform his duty and did so by fully participating in deliberations. We disagree.

The problem with Juror No. 4 was not a failure to deliberate. Rather, in discharging Juror No. 4, effect was given to the rule that “[w]hen the trial court discovers during trial that a juror misrepresented or concealed material information on voir dire tending to show bias, the trial court may discharge the juror if, after examination of the juror, the record discloses reasonable grounds for inferring bias as a ‘demonstrable reality,’ even though the juror continues to deny bias. [Citations.]” (*People v. Price* (1991) 1 Cal.4th 324, 400.)

Prospective jurors in this case were questioned regarding whether they had been victims of crimes similar to the one charged against defendant precisely because of the potential of such an experience to affect adversely the juror’s objective evaluation of the evidence. Juror No. 4 admitted deliberately concealing on voir dire that he had been the victim of a shooting, and the questioning of the other jurors disclosed reasonable grounds for inferring that as a result of his experience, Juror No. 4 was biased with respect to whether the witnesses in this case could have accurately identified the shooter. Under these circumstances, we cannot say that the trial court abused its discretion in discharging Juror No. 4 for not being able to perform his duty as a juror.

**DISPOSITION**

The judgment is affirmed.  
NOT TO BE PUBLISHED.

MALLANO, J.

We concur:

SPENCER, P. J.

VOGEL, J.